

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Pacifica Broadcasting Company)	Facility I.D. No. 51241
Licensee of Station KALO(TV))	NAL/Acct. No. 0741420038
Honolulu, Hawaii)	FRN: 0012088456

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: April 26, 2007

Released: April 30, 2007

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”),¹ by the Chief, Video Division, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,² we find that Pacifica Broadcasting Company (the “Licensee”), licensee of Station KALO(TV), Honolulu, Hawaii (the “Station”), apparently willfully and repeatedly violated Section 73.3615(d) of the Rules, by failing to file Biennial Ownership Reports.³ Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of six thousand dollars (\$6,000).

II. BACKGROUND

2. Section 73.3615(d) of the Rules requires noncommercial educational broadcast station licensees to file a Biennial Ownership Report (FCC Form 323-E) when filing the station’s application for renewal of license and every two years thereafter on the anniversary of the date its renewal application is due to be filed.⁴ Section 73.3527(e)(4) of the Rules also requires each licensee of a noncommercial educational broadcast station to place in the public inspection file for its station, a copy of the most recent, complete ownership report filed with the Commission. Where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify the licensee’s rule violation.⁵

3. On October 2, 2006, the Licensee filed its license renewal application (FCC Form 303-S) for Station KALO(TV) (the “Application”) (File No. BRET-20061002BUS). In response to Section IV,

¹ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

² See 47 C.F.R. § 0.283.

³ See 47 C.F.R. § 73.3615(d).

⁴ 47 C.F.R. § 73.3615.

⁵ See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

Question 3 of the Application, the Licensee stated that, during the previous license term, it had failed to timely place in its public inspection file all of the documentation required by Section 73.3527 of the Rules. In Exhibit 17, it indicated that in preparing its Application, it determined that it had failed to file Biennial Ownership Reports with the Commission for three years during the license term. The Licensee stated that it failed to file Biennial Ownership Reports for 2000, 2002, and 2004. The Licensee reported that reconstructed reports had been prepared and submitted to the Commission simultaneously with the filing of the Application. The Licensee also reported that copies of its Biennial Ownership Reports had been placed in the public inspection file.

III. DISCUSSION

4. The Licensee's failure to file Biennial Ownership Reports for 2000, 2002, and 2004 constitutes an apparent willful and repeated violation of Section 73.3615(d). This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁶ Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.⁷ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁸ and the Commission has so interpreted the term in the Section 503(b) context.⁹ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."¹⁰

5. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form.¹¹ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."¹²

6. In this case, the Licensee conceded that it failed to file all of the Biennial Ownership Reports required during its license term. Given the nature and extent of its omissions, we find that the Licensee is apparently liable for a forfeiture in the amount of \$6,000.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Pacifica Broadcasting Company

⁶ 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(1).

⁷ 47 U.S.C. § 312(f)(1).

⁸ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

⁹ *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁰ 47 U.S.C. § 312(f)(2).

¹¹ *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹² 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of six thousand dollars (\$6,000) for its apparent willful and repeated violation of Section 73.3615(d) of the Commission's Rules.

8. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, Pacifica Broadcasting Company SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

10. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹³

13. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Pacifica Broadcasting Company, 875 Waimanu Street, Suite 110, Honolulu, Hawaii 96813, and to its counsel, Harry F. Cole, Esquire, Fletcher, Heald & Hildreth, 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹³ See 47 C.F.R. § 1.1914.